

REMARKS

I. Introduction

With the addition of new claims 27 and 28, claims 18 to 28 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

As an initial matter, an Information Disclosure Statement was filed on July 10, 2003. However, an initialed copy of the PTO-1449 paper has not been returned to Applicants. Applicants respectfully request an initialed copy of the PTO-1449 paper with the next Office communication.

II. Amendments to Claims 21 and 22

Claims 21 and 22 have been amended herein without prejudice to address certain informalities that came to Applicants' attention. In this regard, claim 21 has been amended herein without prejudice to end in a period, which was inadvertently omitted, and claim 22 has been amended herein without prejudice to correct a typographic error to change "immedicately" to --immediately--.

III. Rejection of Claims 18, 25 and 26 Under 35 U.S.C. § 102(b)

Claims 18, 25 and 26 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,788,417 ("Graflind"). Applicants respectfully submit that Graflind does not anticipate the present claims for the following reasons.

Claim 18 relates to an arrangement for controlling a shape of a stent body. Claim 18 recites that the arrangement includes an electrical circuit for establishing an electrical current flow through the stent for heating the stent to cause the stent to shift from a martensite phase to an austenite phase to change the shape of the stent body. Graflind merely describe an electrical heating pad. Graflind makes no mention whatsoever of an electrical circuit is for establishing an electrical circuit current flowing through a stent -- or any other object -- for heating a stent or other object to cause a stent or other object to shift from a martensite phase to an austenite phase to change a shape of a stent or other object.

Furthermore, claim 18 recites that the electrical circuit is adapted to monitor a phase change of the stent and to control the flow of electrical current through the stent as a function of monitoring the phase change of the stent. Graflind

makes no mention whatsoever of an electrical circuit adapted to monitor a phase change of a stent -- or any other object -- or to control a flow of electrical current through a stent or other object as a function of monitoring a phase change of a stent or other object.

To anticipate a claim, each and every element as set forth in the claim must be found in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). As more fully set forth above, it is respectfully submitted that Graflind does not disclose, or even suggest, all of the features of claim 18. It is therefore respectfully submitted that Graflind does not anticipate claim 18.

Moreover, Applicants respectfully disagree with the unsupported contention contained on page 2 of the Office Action that "[t]he circuit [allegedly described by Graflind] could have been used to heat a stent and would operate as claimed." Whether or not "[t]he circuit [allegedly described by Graflind] could have been used to heat a stent" -- which Applicants do not concede -- is not relevant to the issue of whether Graflind anticipates claim 18 and is nothing more than pure speculation and conjecture. To the extent that the Office Action may be relying on the doctrine of inherency, inherency may not be established by probabilities or possibilities, and the mere fact that a certain thing may result from a given set of circumstances is insufficient. In re Robertson, 49 U.S.P.Q.2d 1949 (Fed. Cir. 1999) (quoting Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1269, 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991)). It is therefore respectfully submitted that Graflind does not anticipate claim 18 for this additional reason.

As for claims 25 and 26, which depend from claim 18 and therefore include all of the limitations of claim 18, it is respectfully submitted that Graflind does not anticipate these dependent claims for at least the same reasons given above in support of the patentability of claim 18.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

IV. Rejection of Claims 18 to 20, 25 and 26 Under 35 U.S.C. § 102(b)

Claims 18 to 20, 25 and 26 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,695,709 ("Sachs et al."). Applicants respectfully submit that Sachs et al. do not anticipate the present claims for the following reasons.

Sachs et al. purport to relate to a method and apparatus for heating and controlling the temperature of ultra small volumes. As indicated above, claim 18 relates to an arrangement for controlling a shape of a stent body and recites that the arrangement includes an electrical circuit for establishing an electrical current flow through the stent for heating the stent to cause the stent to shift from a martensite phase to an austenite phase to change the shape of the stent body. Sachs et al. make no mention whatsoever of an electrical circuit is for establishing an electrical circuit current flowing through a stent -- or any other object -- for heating a stent or other object to cause a stent or other object to shift from a martensite phase to an austenite phase to change a shape of a stent or other object.

As further indicated above, claim 18 recites that the electrical circuit is adapted to monitor a phase change of the stent and to control the flow of electrical current through the stent as a function of monitoring the phase change of the stent. Sachs et al. make no mention whatsoever of an electrical circuit adapted to monitor a phase change of a stent -- or any other object -- or to control a flow of electrical current through a stent or other object as a function of monitoring a phase change of a stent or other object.

Applicants also note that whether "[t]he circuit [allegedly disclosed by Sachs et al.] could have been used to heat a stent and would operate as claimed" -- which Applicants do not concede -- is irrelevant to the issue of whether Sachs et al. anticipate claim 18 and is nothing more than pure speculation and conjecture, which, for the reasons more fully set forth above, cannot sustain an anticipation rejection.

Since Sachs et al. do not disclose, or even suggest, all of the limitations of claim 18, it is respectfully submitted that Sachs et al. do not anticipate claim 18.

As for claims 19, 20, 25 and 26, which depend from claim 18 and therefore include all of the limitations of claim 18, it is respectfully submitted that Sachs et al. do not anticipate these dependent claims for at least the same reasons given above in support of the patentability of claim 18.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

V. Rejection of Claims 18 to 26 Under 35 U.S.C. § 102(b)

Claims 18 to 26 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,359,626 ("Potter"). Applicants respectfully submit that Potter does not anticipate the present claims for the following reasons.

Potter purports to relate to an electric blanket heating control with capacitance sensing. As indicated above, claim 18 relates to an arrangement for controlling a shape of a stent body and recites that the arrangement includes an electrical circuit for establishing an electrical current flow through the stent for heating the stent to cause the stent to shift from a martensite phase to an austenite phase to change the shape of the stent body. Potter makes no mention whatsoever of an electrical circuit is for establishing an electrical circuit current flowing through a stent -- or any other object -- for heating a stent or other object to cause a stent or other object to shift from a martensite phase to an austenite phase to change a shape of a stent or other object.

As further indicated above, claim 18 recites that the electrical circuit is adapted to monitor a phase change of the stent and to control the flow of electrical current through the stent as a function of monitoring the phase change of the stent. Potter makes no mention whatsoever of an electrical circuit adapted to monitor a phase change of a stent -- or any other object -- or to control a flow of electrical current through a stent or other object as a function of monitoring a phase change of a stent or other object.

Applicants also note that whether "[t]he circuit [allegedly disclosed by Sachs et al.] could have been used to heat a stent and would operate as claimed" -- which Applicants do not concede -- is irrelevant to the issue of whether Potter anticipates claim 18 and is nothing more than pure speculation and conjecture, which, for the reasons more fully set forth above, cannot sustain an anticipation rejection.

Since Potter does not disclose, or even suggest, all of the limitations of claim 18, it is respectfully submitted that Potter do not anticipate claim 18.

As for claims 19 to 26, which ultimately depend from claim 18 and therefore include all of the limitations of claim 18, it is respectfully submitted that

Potter does not anticipate these dependent claims for at least the same reasons given above in support of the patentability of claim 18.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

VI. New Claims 27 and 28

New claims 27 and 28 have been added herein. It is respectfully submitted that new claims 27 and 28 do not add any new matter and are fully supported by the present application, including the Specification. Since claims 27 and 28 include features analogous to features included in claim 18, it is respectfully submitted that claims 27 and 28 are patentable over the references relied upon for at least the same reasons more fully set forth above in support of the patentability of claim 18.

VII. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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